

41. The onshore dining facility of Claim 38, further comprising a hydroponic facility and means for supplying deep-sea water to the hydroponic facility from drainage of the dining facility.

B, 42. An onshore beauty-shop/fitness-gymnasium facility that includes means for collecting deep-sea water and means for supplying the water to the facility.

43. The onshore beauty-shop/fitness-gymnasium facility of Claim 42, further comprising a fish breeding plant and means for supplying deep-sea water to the plant from drainage of the ~~beauty-shop/fitness-gymnasium facility.~~

REMARKS:

The Examiner objected to a grammatical error in claim 2. Because the claims-as-filed have been canceled by this amendment, this objection is now moot.

Citing 35 U.S.C. 112, second paragraph, the Examiner rejected original claims 1-7 as being indefinite because the terms "deep," "such as," and "the deep-sea water..." are not defined, are relative, and/or lack an antecedent basis. In response, the applicant has canceled claims 1-7 and submits herewith new claims 8-43. Since the new claims do not contain the terms "such as" or

"deep" (by itself) and all problems involving antecedent basis have been corrected, the applicant believes that these rejections have been obviated.

Regarding the definiteness of the term "deep-sea water," the applicant respectfully submits that those skilled in the art know that there is a clear distinction between "sea water" in general and "deep-sea water" in particular. This difference is clearly disclosed in two Japanese references (originals and translations of which are provided with this response).

The first reference is from the website of the Kochi Prefectural Deep Seawater Laboratory (<http://www.kochi-kgo.jp/~kochi-dw/>). A hyperlink titled "What is Deep Seawater?" on the Japanese language version of that homepage defines deep-sea water as being sea water that is below about 200 meters in depth. This reference also summarizes data from studies conducted in the late nineteen eighties that detail how photosynthesis does not take place at a depth greater than 200 meters, leading to the accumulation of certain inorganic salts characteristic of deep-sea water. Furthermore, the reference discloses that the temperature of deep-sea water (again referred to as sea water 200 meters or more in depth) is consistently lower than sea water above that depth, leading to very low or non-existent bacterial content when compared more shallow sea water.

The second reference, a published lecture from Professor T. Sakou, councilor of the Japan Marine Science and Technology Center, also precisely defines deep-sea water as "at the level of 200 m[eters] or more under the surface." Therefore, the applicant respectfully submits that it is well known to one of ordinary skill in the art that the "deep-sea water" limitation of the claims means seawater that is about 200 meters or greater in depth.

Accordingly, the application is believed to be in compliance with 35 U.S.C. 112.

The Examiner further rejected original claims 1 and 2 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,026,538 issued to Boyd et al. and claim 4 as anticipated by Atwell, U.S. Patent No. 4,536,257. The Examiner also rejected claims 3 and 5-7 under 35 U.S.C. 103(a) as being unpatentable over Boyd et al. in view of Mougin (U.S. Patent No. 4,166,363) or the Atwell patent. Because these rejections are still deemed to be relevant to the new claims, each is discussed below.

Boyd et al. generally discloses a pool that floats on a body of water. This pool has a plurality of openings that allow free flow of water into and out of the pool enclosure (see, for example, claim 1). Thus, this pool is filled with surface water,

not the deep-sea water of 200 meters or below as is utilized in the present invention. Accordingly, this reference cannot anticipate new claims 8-43 because each of these claims is limited specifically to deep-sea water.

The Atwell patent discloses a machine for making sea water potable. Thus, while Atwell describes a desalination plant that pools collected sea water, there is no disclosure or suggestion to collect deep-sea water or to create a deep-sea water pool or facilities that use deep-sea water. In fact, the applicant respectfully submits that collecting sea water from 200 meters or greater in depth would be impractical and undesirable according to Atwell. This is due to the fact that deep-sea water is relatively higher in dissolved salts and much colder than less-deep sea water (see the Kochi Laboratory and Sakou references provided herewith). Thus, if anything, Atwell teaches away from the idea of using deep-sea water because evaporation and desalination of saltier, lower temperature deep-sea water would provide a much less efficient return of fresh water (See column 6, lines 19-40).

Accordingly, neither the Boyd et al. or Atwell patents teach or suggest the deep-sea water invention as defined by the new claims of the present invention.

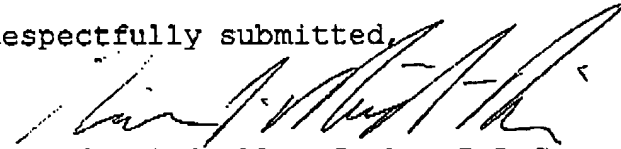
Moreover, since all independent claims are believed to be distinguishable from the prior art based on the deep-sea water limitation, all dependent claims would also be so distinguished. Thus, the rejections made under 35 U.S.C. 103(a) are believed to have been obviated.

In view of the foregoing, the applicant respectfully requests that this case be advanced to allowance.

Enclosed herewith is an Information Disclosure Statement under 37 CFR 1.501, which documents the two new Japanese references that are being submitted in response to this Office Action.

A check for \$162 was previously submitted with the preliminary amendment (filed on January 28, 2002) to reflect the additional fee for claims in excess of 20 (38 total claims instead of 7; the independent claims are reduced from seven to five). Accordingly, no fee is believed to be due with this amendment. Should there be any unforeseen costs, please charge our Deposit Account No. 02-2451.

Respectfully submitted,


Durando Birdwell & Janke, P.L.C.

Gavin J. Milczarek-Desai
Reg. No. 45,801
(520) 881-9442 phone
(520) 881-9448 fax